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SUBJECT: DEMARCHE REQUEST ON UN TRUST FUND SUPPORTING THE INITIATIVES OF THE CONTACT GROUP ON PIRACY

(SBU) 1. This is an action request. USUN is instructed to demarche UN officials as appropriate on the proposed changes to the terms of reference for the International Trust Fund Supporting the Initiatives of the Contact Group on Piracy off the Coast of Somalia (CGPCS). At its discretion, USUN may wish to coordinate with Germany, which has done much of the heavy work on this issue; in any case, please consult/inform the German Mission. Post may draw from the points in paragraph three.

(SBU) 2. Background: In order to develop a funding mechanism for the initiatives of the Contact Group on Piracy off the Coast of Somalia (CGPCS), the participants of the CGPCS, led by Germany and with active involvement by the United States, negotiated Terms of Reference (TOR) for a UN Trust Fund in 2009. The Trust Fund TOR was designed to provide nations and industry groups a means of contributing to counter-piracy efforts, and emphasized the importance of funding prosecution-related efforts.

Throughout the negotiations, the UN and the CGPCS participants agreed that the Trust Fund's Board, on which several UN agencies would serve as non-voting members, would make the decisions about which proposals would be funded and which would be given priority. When the CGPCS plenary adopted the TOR at its plenary in September 2009, the CGPCS Chair authorized the UN to establish the Fund according to those Terms. The UN was not authorized to make substantive changes to the TOR as negotiated and agreed upon by the UN and the CGPCS.

Only after the TOR was approved by the Contact Group plenary in September, DPA announced that UNDP has recanted its willingness to serve as Fund Manager. The United States had long questioned whether UNDP was the appropriate Fund Manager to begin with, preferring UNODC since the Fund was primarily intended to support prosecution-related efforts. After UNDP backed out, DPA recommended the switch to UNODC and made repeated assurances that only technical amendments to the TORs would be necessary. The German Mission convened several emergency sessions of the Contact Group participants in late 2009 to review the amended TORs and select the Fund Board. The U.S. pursued and was granted a seat on the Trust Fund Board by decision of the CGPCS participants.

It was not until mid-January, less than 2 weeks before the 5th Contact Group plenary and the first Board meeting, that the United States learned that the UN Controller requires the proposed, additional changes. Discussions between UNODC and the Controller's Office over the past week have resulted in slight improvements. The U.S., however, strongly objects to the process during which the U.N. has repeatedly made changes to the TOR over the past several months with little to no transparency, and requests further assurances from the UN regarding its role with respect to the Fund. Without these assurances, the U.S. will not support the adoption of the amended TORs by the CGPCS.

Among the specific changes the U.S. would like to see is the

addition of language to make it clear that when the TOR refers to UN rules, regulations, and policies, it is referring to financial rules and regulations and administrative policies, as opposed to political policies. The U.S. would also like clarification as to how ear-marked contributions will be handled. The U.S. also does not see any reason, nor are we aware of any UN regulations, that would require the Secretary General to endorse the composition of the Fund Board.

(SBU) 3. Begin Points:

-- We are very concerned that, less than two weeks before the Board was scheduled to convene for the first time and consider its first proposals, the United States learned that the UN Controller has proposed what appear to be substantive changes to the Terms of Reference, as agreed to by the CGPCS participants and the UN following many months of negotiations. The TOR has already been changed once before when, after the TOR had been adopted by CGPCS participants in September, UNDP declined to administer the fund and the UNODC assumed that role.

-- The UN Department of Political Affairs (DPA) has represented from the beginning of this process that it was negotiating on behalf of the United Nations as a whole. The new TOR differs in significant and substantive ways from the TOR that were negotiated with DPA. For example, at no point did the participants contemplate the UN Secretary General having any sort of approval authority over the selection of Board members as now called for in the revised TORs.

-- Given the repeated revisions that have taken place since the TOR was originally approved by the CGPCS in September, the United States will not endorse the new TOR without additional clarification as to the implications of the changes proposed by the UN Controller's Office. We would also like written assurances regarding the UN's role in the implementation and administration of the Fund.

-- With two work days prior to the Wednesday 27 January Board meeting, the issue remains unresolved. The Board cannot begin considering proposals until the Terms of Reference are finalized, and the new TOR must be approved by the CGPCS. It does not reflect well on any of us that the Fund, which was approved by the CGPCS in September, has still not been established 4 months later in January. We hope the UN is as interested as we are in ensuring that the terms of reference are ready to be presented for approval during the upcoming January 28 CGPCS plenary. Our ultimate priority, however, is ensuring that all parties to the TOR are clear on the roles and responsibilities of those involved in the management and administration of the Fund.

CLINTON